



**Trillion Partners, Inc.
9208 Waterford Centre Blvd., Suite 150
Austin, Texas 78758**

January 10, 2011

Federal Communications Commission *Delivered via ECFS & email*
Attention: Ms. Gina Spade, Deputy Division Chief
Ms. Erica Myers, Wireline Competition Bureau
Ms. Dana Bradford, Wireline Competition Bureau

Telecommunications Access Policy Division
445 12th Street SW
Washington, DC 20554

CC Docket No 02-6

Re:

Appeal
School District: Fountain-Ft Carson School District 8, Fountain, CO
Funding Year: 2006
FRN Denied: 1445936
Form 471 Application Denied: 498944
Reason for Denial: Gifts and Communications

Dear Gina, Erica and Dana:

On November 3, 2010, Trillion filed a Master Appeal Summary with the FCC on ECFS, as well as provided the Master Appeal Summary to you via E-Mail and in hard copy. In the Master Appeal, Trillion provides the rationale as to why USAC's mass denial of funding is without merit. Please accept this Individual appeal for Fountain-Ft Carson School District 8, along with the Master Appeal Summary as the appeal in its totality.

Gifts

USAC alleges that Fountain-Ft Carson School District 8 received valuable gifts which tainted a fair and open competitive bidding process as the basis for denial of funding. Trillion denies USAC's allegations.

In fact and in all instances, the meals, gifts and gratuities that Trillion provided to the applicant were in full compliance with all applicable (FCC, state and local) competitive bidding and procurement requirements at the time. Please also note, in February of 2009, Trillion instituted a Code of Conduct for its employees that prohibits meals, gifts or gratuities of any kind and is stricter than the new rules put in place with the FCC Sixth Report and Order, FCC 10-175.

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Also, please note that on December 15, 2010, the FCC Wireline Competition Bureau provided guidance on the Gift Rules. In this guidance, the FCC states that *"Timing. As stated in the Sixth Report and Order, the newly codified E-rate program gift rules take effect 30 days after publication of the order in the Federal Register."*¹ The Sixth Report and Order, including Appendix A, was published on December 3, 2010." This makes the effective date for the gift rules January 3, 2011. Therefore, this is further evidence that USAC is applying the new Gift Rules retroactively, and as is the case with Fountain Ft-Carson School District 8, is applying these new rules retroactively as far back as 2005, which is a full five years prior to the rule taking effect.

The amounts spent on meals or other routine business expenses were trivial and could not have possibly influenced a decision that would ultimately be made by the School Board. Furthermore, no member of the School Board or decision maker received any such expense. The fact is, Trillion invested \$453,382 in order to construct Fountain's network providing critical services with a total contract value of \$2,845,900, while the amount of the routine business meals and expenses only amounted to an annual average of \$42.57 across the entire district, and no such expenses occurring prior to the initial bid that was awarded to Trillion.

In summary, this applicant's actions were in full compliance with FCC, state and local procurement guidelines in effect at the time, as described in the Master Appeal Summary. Therefore, the customer's actions did not, in any way whatsoever, improperly affect the competitive bidding process.

Communications

Also, USAC is denying this application on the following basis:

Funding Commitment Decision Explanation: The FRN will be denied because you did not conduct a fair and open competitive bidding process. The documentation provided by you and/or the service provider indicates that the school district engaged in numerous meetings, e-mail discussions, and/or verbal discussions with Trillion employees prior to the posting of the Form 470 and throughout the competitive bidding process which tainted the competitive bidding process. Trillion was consulted and/or offered details about services and products you were requesting on your FCC Form 470 and/or Request for Proposal (RFP). The competitive bidding process was influenced by Trillion when they assisted you in developing your services specifications for your FCC Form 470/or RFP. You failed to conduct a fair and open competitive bidding process free from conflicts of interest.

Trillion denies USAC's allegations and will refute the communications below.

USAC Alleged Communication Issue:

USAC alleges that Trillion aided the customer in developing the specifications for the services the School District sought. USAC points to the following e-mail as the only evidence of what was alleged.

¹ *Sixth Report and Order* at para. 118.

Roudebush, Dave

From: Jennifer Carter [jennifer.carter@trillion.net]
Sent: Wednesday, November 19, 2008 7:08 AM
To: Rick Van Sickle; Roudebush, Dave
Subject: RE: 470 draft for Trillion WAN

Looks good, Rick.

Jennifer Carter
E-Rate Specialist
Trillion
www.trillion.net
205.383.4396 Direct
512.334.4100 Main
512.684.1148 Fax

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From: Rick Van Sickle [mailto:etechco@comcast.net]
Sent: Tuesday, November 18, 2008 3:22 PM
To: Jennifer Carter; 'Roudebush, Dave'
Subject: 470 draft for Trillion WAN

Attached is a draft of the 470 for the WAN. Please look it over and let me know if anything needs to be added. The RFP will be a one page document describing what is currently in place, and the changes to the radios that you are asking for. That way all prospective bidders will be aware that there is a current contract in place.

Rick Van Sickle
ETECHCO, INC.
10 E. Jefferson St.
Colorado Springs, CO 80907

PH: 719-216-2012
FAX: 501-637-5162
etechco@comcast.net
<http://etechco.net>

Communication Was Within Rules:

First and foremost, a response of "Looks good" does not show any guidance whatsoever on the school district's Form 470.

Secondly, when the actual Form 470 is reviewed, it is clear that Trillion had no influence on the Form 470 that was actually filed. That Form 470 is as follows:

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Form 470 Application Number: 710210000638402
Applicant's Form Identifier: FIN_470_08
Application Status: CERTIFIED
Posting Date: 11/20/2007
Allowable Contract Date: 12/18/2007
Certification Received Date: 11/27/2007

1. Name of Applicant: FOUNTAIN-FT CARSON SCH DIST 8		
2. Funding Year: 07/01/2008 - 06/30/2009	3. Your Entity Number 142289	
4a. Applicant's Street Address, P.O.Box, or Route Number 10665 JIMMY CAMP ROAD		
City FOUNTAIN	State CO	Zip Code 80817-1703
b. Telephone number (719) 382- 1300		c. Fax number (719) 382- 7338

☒ **Telecommunications Services**
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have and RFP, you risk denial of your funding requests.

a ☐ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ☒ **NO**, I have not released and do not intend to release an RFP for these services.

Whether you check YES or NO, you must list below the Telecommunications Services you seek. Specify each service or function (e.g., local voice service) and quantity and/or capacity (e.g., 20 existing lines plus 10 new ones). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c <input checked="" type="radio"/> Check this box if you prefer discounts on your bill.	<input type="radio"/> Check this box if you prefer reimbursement after paying your bill in full.	<input type="radio"/> Check this box if you do not have a preference.
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Service or Function:	Quantity and/or Capacity:
Fax lines	Up to 20 lines
Modem Lines	Up to 60 lines
Long Distance	District wide
Celluar Phone Service	Up to 130 phones
Telephone service through wireless WAN	14 existing sites, up to 2 possible additional sites, 300 extensions, min 20 mb
Digital Transmission Services	Up to 5 t-1 lines for local phone service

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9 Internet Access
Do you have a Request for Proposal (RFP) that specifies the services you are seeking ? If you check YES, your RFP must be available to all interested bidders for at least 28 days. If you check YES and your RFP is not available to all interested bidders, or if you check NO and you have or intend to have an RFP, you risk denial of your funding requests.

a ☒ **YES**, I have released or intend to release an RFP for these services. It is available or will become available on the Web at or via (check one):
☐ the Contact Person in Item 6 or ☐ the contact listed in Item 12.

b ☒ **NO**, I have not released and do not intend to release an RFP for these services.
Whether you check YES or NO, you must list below the Internet Access Services you seek. Specify each **service or function** (e.g., monthly Internet service) and quantity and/or capacity (e.g., for 500 users). See the Eligible Services List at www.sl.universalservice.org for examples of eligible Telecommunications services. Remember that only eligible telecommunications providers can provide these services under the universal service support mechanism. Attach additional lines if needed.

c ☒ **Check this box if you prefer discounts on your bill.** ☐ **Check this box if you prefer reimbursement after paying your bill in full.** ☐ **Check this box if you do not have a preference.**

Service or Function:	Quantity and/or Capacity:
Internet Access	Up to 20 Mbps
Wireless WAN	Up to 2 additional sites at 20 Mbps minimum
Cellular Internet Service	Up to 20 phones

In reviewing this Form 470, Trillion is only able to offer 2 of the 9 services that are being requested, Wireless WAN and Internet Access. If Trillion were to have had influence on this Form 470 being posted, why would Trillion request services be listed it did not offer? This Form 470 is also open to a wide range of competitors across all of the services. There is nothing in this Form 470 that provides Trillion with a competitive advantage. Therefore, even if the comment "Looks good" did influence the school district to change or modify this Form 470 in some way shape or form (which there is no evidence), the guidance was obviously neutral as no advantage is provided.

Also, the school district makes the statement that there was an existing contract in place. The simple fact is, Trillion and the school district had a contract in place and there was still years left on the contract. Is USAC adverse to a school district notifying potential bidders that there is a contract already in place with a given service provider?

In the consultant's statement, he talks about the "Radios". The context here is that Trillion originally built the network to serve this school district with unlicensed radio technology. Trillion made a technology change to its standard product line from unlicensed to licensed radio technology. Under E-Rate rules, Trillion is allowed to discuss its product offering with a school district. Please see Trillion's Master Appeal filed with the FCC on November 3, 2010. Discussing licensed radios is nothing more than discussing Trillion's product offering.

Also, in regards to the consultant providing the Form 470 to Trillion prior to posting, this e-mail was dated on November 18, 2007. The Form 470 was posted on November 20, 2007. Trillion's proposal was issued to Fountain Ft-Carson on January 2, 2008 which is 43 days after the Form 470 was filed. Therefore, Trillion did not even provide a proposal until 15 days after the required 28 day waiting period. The Form 471 was certified on February 7, 2008. With this timeline, there was no advantage provided to Trillion by the school district.

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USAC Alleged Communication Issue:

USAC also alleges that the following communication tainted the competitive bidding process:

Roudebush, Dave

From: Sadie Walley [sadie.walley@trillion.net]
Sent: Thursday, May 08, 2008 7:10 AM
To: Roudebush, Dave
Subject: RE: Save the Date! Trillion Visionaries in Education Customer Council
Attachments: image001.jpg

I heard the same comment from Harrison and am really disappointed about the conflict. I know the event date debate went on for a couple of weeks due to many factors. No info has filtered down to me yet re: TIE, but I will ask the question. I am really sorry if that will preclude you from attending in Austin.

BTW - I passed your lovely lady story on to some of my associates in our home office. All the names were changed to protect the innocent. => Funny stuff! You put a few smiles on some faces this AM.

Sadie Walley
Regional Manager
Trillion
www.trillion.net
303.635.6322 - Business
303.815.2635 - Mobile
641.354.2175 - eFax
sadie.walley@trillion.net

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From: Roudebush, Dave [mailto:DRoud@FFC8.org]
Sent: Thursday, May 08, 2008 7:04 AM
To: Sadie Walley
Subject: RE: Save the Date! Trillion Visionaries in Education Customer Council

Sadie,

Those dates are concurrent with the Colorado TIE conference. Was Trillion not going to have a presence there?

David C. Roudebush, Ph.D.
Assistant Superintendent
Fountain-Fort Carson S.D. 8

10665 Jimmy Camp
Fountain, CO 80817
W- 719.382.1310

From: Sadie Walley [mailto:sadie.walley@trillion.net]
Sent: Wednesday, May 07, 2008 7:10 PM
To: Roudebush, Dave
Cc: Gary Gaessler
Subject: Save the Date! Trillion Visionaries in Education Customer Council

We hope you will be available to attend!!

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Communication Was Within Rules:

An invite to a current customer from a service provider to attend a technology conference is not a violation of any rule whether that be FCC, State, or local. The school district did not attend the conference and Trillion provided no meal, gift or gratuity associated with this conference to Fountain-Ft Carson school district.

Also, please notice the dates of this communication string. The invitation occurs three months after the Form 471 was filed. How could an invitation to a technology conference extended from a service provider to a school district where the school district did not attend that conference and the service provider did not provide any associated meal, gift or gratuity to the school district, possibly influence a bid process that occurred three months prior?

USAC Alleged Communication Issue:

USAC also points to the following communication as proof of the allegations that the communication between Trillion and Fountain-Ft Carson school district tainted the competitive bidding process:

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Gould, Leisha

From: Sadie Walley [sadie.walley@trillion.net]
Sent: Tuesday, June 10, 2008 4:08 PM
To: Roubesh, Dave; Gould, Leisha
Cc: Gary Gaessler; Robert Forman; Erik Hellmeyer
Subject: The Delay

Erik just sent Gary and me a note about the delay of delivery for the 100 Mbps. I am sincerely sorry about the news. Erik has a very strong and professional relationship with Qwest and is able to leverage that relationship to expedite most processes. I am sure he is doing and will continue to do everything he can to move this project along as quickly as possible.

I am very sorry.

Sadie Walley
Regional Manager
Trillion
www.trillion.net
303.635.6322 - Business
303.815.2635 - Mobile
641.354.2175 - eFax
sadie.walley@trillion.net

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Gould, Leisha

From: Sadie Walley [sadie.walley@trillion.net]
Sent: Thursday, June 12, 2008 11:04 AM
To: Gould, Leisha
Cc: Roubesh, Dave; Gary Gaessler; Robert Forman
Subject: Follow up & Visionaries in Technology Education Council (VTEC): Vision Quest 2008 - June 24-25
Attachments: image002.gif; oledata.mso; VTEC Agenda June 11.doc; image001.gif

Hi Leisha,

I sent Dave an email to let him know that we are working on a fair arrangement to accommodate FCC due to the delayed install. We are very disappointed and sorry.

Switching gears, I wanted to forward this email to you. It went out to all Council participants. Are you still considering the opportunity?

Sadie Walley
Regional Manager
Trillion
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303.635.6322 - Business
303.815.2635 - Mobile
641.354.2175 - eFax
sadie.walley@trillion.net

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Communication Was Within Rules:

The communication that occurred in this communication is 3+ months after the bid process was completed. The communication is revolving around the installation of the service that was contracted, and the Form 471 was filed, for. There is no rule whether that be FCC, State or local that prohibits a service provider from communicating a delay

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in the implementation schedule of a service that is contracted for and apologizing for this delay.

It would be a travesty if this application were to be denied based upon a retroactive application of new rules defined in the FCC Sixth Report and Order. It would also be a travesty if this application were to be denied because; Trillion provided neutral guidance with a comment of "Looks good", Trillion invited the school district to a conference, and Trillion communicated with the school district that there was a delay in the implementation of services.

Trillion respectfully requests that this appeal be granted.

Sincerely,

Trillion Partners, Inc.

Attachments:

- Master Appeal Summary dated November 3, 2010 as previously filed on November 3, 2010 under ECFS Number 2010113403548
- Funding Decision Commitment Letter (FCDL)

Cc:

Ron Reich, Intel Capital

Peter Pitsch, Intel

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Schools & Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

November 12, 2010

Virginia Bryant
Trillion Partners, Inc
9208 Waterford Center Blvd. Suite 150
Austin, TX 78758

Re: SPIN: 143025872
Service Provider Name: Trillion Partners, Inc

Form 471 Application Number: 498944
Funding Year: 2006

FCC Registration Number:

Applicant Name: FOUNTAIN-FT CARSON SCH DIST 8
Billed Entity Number: 142289
Applicant Contact Person: Cheryl Walker

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust the overall funding commitment. The purpose of this letter is to make the required adjustments to the funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the service provider is responsible for all or some of the program rule violations. Therefore, the service provider is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

Schools and Libraries Division - Correspondence Unit
100 South Jefferson Road, P.O. Box 902, Whippany, NJ 07981
Visit us online at: www.usac.org/sl

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
 - Billed Entity Name,
 - Form 471 Application Number,
 - Billed Entity Number, and
 - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal. To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the applicant for informational purposes. If USAC has determined the applicant is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the applicant detailing the necessary applicant action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or the applicant(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds the Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the service provider is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Cheryl Walker
FOUNTAIN-FT CARSON SCH DIST 8

Funding Commitment Adjustment Report
Form 471 Application Number: 498944

Funding Request Number:	1445936
Contract Number:	N/A
Services Ordered:	INTERNET ACCESS
Billing Account Number:	719-382-1300
Original Funding Commitment:	\$91,123.20
Commitment Adjustment Amount:	\$91,123.20
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$91,123.20
Funds to be Recovered from Service Provider:	\$91,123.20

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, documentation provided by you and/or your vendor indicated that there was not a fair and open competitive bid process free from conflicts of interest. The documents provided by you and/or your service provider indicated that, prior to/throughout your contractual relationship with the service provider listed on the FRN, you were offered and accepted gifts, meals, gratuities, or entertainment from the service provider, which resulted in a competitive process that was no longer fair and open. Therefore, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant and service provider.